

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

RUFUS LOU NELSON JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

No. 1:23-cv-01476-WBS-SAB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO CLOSE CASE, AND DECLINING TO
ISSUE CERTIFICATE OF APPEALABILITY

(ECF No. 8)

Rufus Lou Nelson Jr. (“Petitioner”) is a federal prisoner proceeding *pro se* with a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2241. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 7, 2023,¹ the Magistrate Judge issued findings and recommendations recommending that the petition for writ of habeas corpus be dismissed for lack of jurisdiction. (ECF No. 8.) On January 8, 2024, Petitioner filed objections. (ECF No. 9.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner’s objections, the Court holds the findings and recommendations to be supported by the record and proper analysis.

¹ The findings and recommendations were signed on December 6, 2023, but not docketed until December 7, 2023.

Having found that Petitioner is not entitled to habeas relief, the Court now turns to whether a certificate of appealability (“COA”) should issue. *See Harrison v. Ollison*, 519 F.3d 952, 958 (9th Cir. 2008) (“Where a petition purportedly brought under § 2241 is merely a ‘disguised’ § 2255 motion, the petitioner cannot appeal from the denial of that petition without a COA.”). A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of his petition, and an appeal is only allowed in certain circumstances. *See Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. To obtain a certificate of appealability under 28 U.S.C. § 2253(c), a petitioner “must make a substantial showing of the denial of a constitutional right, . . . includ[ing] showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)).

In the present case, the Court finds that reasonable jurists would not find the Court’s determination that the petition should be dismissed debatable or wrong, or that Petitioner should be allowed to proceed further. Therefore, the Court declines to issue a certificate of appealability.

Accordingly,

1. The findings and recommendations issued on December 7, 2023 (ECF No. 8) are adopted in full;
2. The petition for writ of habeas corpus is dismissed;
3. The Clerk of Court is directed to close the case; and
4. The Court declines to issue a certificate of appealability.

Dated: April 5, 2024


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE